

### **DETAILED ACTION**

**Claims 1-17 are presented for examination.**

A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicant's submission filed March 20, 2008 has been received and entered into the present application. Claims 1-17 are pending and are herein examined on the merits.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-8, 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 0059556 (cited on IDS).

WO 0059556 teaches a superabsorbent material with enhanced odour control and control of bacterial growth comprises a non-acidic, alkali-neutralising compound

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selected from acid anhydrides, lactides, lactones and hydrolysable esters, especially cyclic acid anhydrides, lactides and lactones of 7- or 8-carboxylic acids. The superabsorbent material can be used in hygiene products such as diapers (see abstract). In a sanitary napkin containing as absorbent, three different alkali-neutralising substances the pH was measured at six different places on the non-woven using a contact electrode, and the values were averaged (see paragraph 0012). Table 3 shows that addition of lactide lowers the pH quickly (see page 3, table 3). Superabsorbent material comprising a non-acidic compound selected from acid anhydrides, lactides, lactones and hydrolysable esters (see claim 1). Superabsorbent material according to claim 1, in which the non-acidic compound is selected from lactides and lactones of 7- or 8-carboxylic acids (see claim 2). Superabsorbent material according to claim 2, in which the non-acidic compound is selected from lactide, glycolide and gluconolactone (see claim 3). Superabsorbent material according to any one of the preceding claims, in which said non-acidic compound is present in an amount of 1-20 wt.% with respect to the weight of the superabsorbent material (see claim 4).

Consequently, the reference anticipates the claimed invention defined in claims 1-3, 5-8, 11 and 17.

***Claim Rejections - 35 USC § 103 (New Grounds of Rejection)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 0059556 (cited on IDS), in view of Kluger et al. (US PUB. No. 2002/0045873 A1) and further in view of Sinclair et al. (US Patent No. 5444113).

WO 0059556 teaches a superabsorbent material with enhanced odour control and control of bacterial growth comprises a non-acidic, alkali-neutralising compound selected from acid anhydrides, lactides, lactones and hydrolysable esters, especially cyclic acid anhydrides, lactides and lactones of 7- or  $\alpha$ -carboxylic acids. The superabsorbent material can be used in hygiene products such as diapers (see abstract). In a sanitary napkin containing as absorbent, three different alkali-neutralising substances the pH was measured at six different places on the non-woven

using a contact electrode, and the values were averaged (see paragraph 0012). Table 3 shows that addition of lactide lowers the pH quickly (see page 3, table 3).

Superabsorbent material comprising a non-acidic compound selected from acid anhydrides, lactides, lactones and hydrolysable esters (see claim 1). Superabsorbent material according to claim 1, in which the non-acidic compound is selected from lactides and lactones of 7- or 8-carboxylic acids (see claim 2). Superabsorbent material according to claim 2, in which the non-acidic compound is selected from lactide, glycolide and gluconolactone (see claim 3). Superabsorbent material according to any one of the preceding claims, in which said non-acidic compound is present in an amount of 1-20 wt.% with respect to the weight of the superabsorbent material (see claim 4).

Kluger et al. teach of a formulation effective in reducing the pH in a menstruating vagina or in a tampon inserted therein to below pH 5.5, comprising (a) 3-80% by weight of a solid organic acid polymer; (b) 92-15% by weight of a solid organic acid, and (c) 5-30% of a wetting agent. Also disclosed is a delivery system for releasing an active agent comprising: (a) a deposition comprising the active agent; and (b) a polymeric support on which the deposition is deposited. The delivery system is especially useful in a catamenial tampon for insertion in a human vagina which comprises (a) an inner core comprising an absorbent material; (b) an outer layer comprising a liquid permeable material; and (c) the delivery system (see abstract).

Examples of solid organic acids are citric, inalic, maleic, fumaric, succinic, tartaric and oxalic acids. A preferred organic acid is citric acid. The organic acid comprises 92-15% of the formulation, and preferably 30-15% (see page 2, paragraph 002).

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Examples of wetting agents which may be used in the formulation of the invention include glycerol, polyethylene glycol (PEG), polypropylene glycol (PPG) and surfactants with an HLB ranging from 10 to 18. Preferred wetting agents are glycerol and PEG-8000. The wetting agent comprises 5-30% of the formulation, and preferably 5-10% (see page 2, paragraph 0023).

Sinclair et al. teach polymers dioxaneones such as lactide and glycolide. Although the term dioxanedione is sometimes used to refer specifically to glycolide. The term can be also employed in the general sense to indicate a class of compounds (see col. 2, lines 3-20). The degradable materials of the present invention are useful in health products and absorbent articles (see col. 4, lines 35-50). The polymer of the present invention is in an amount of at least about 20 weight percent (see col.6, lines 65—68 and col. 7, line 1). The polymer of the present material is selected from the group consisting of lactic acid, glycolic acid, lactide, glycolide, substituted variations of the foregoing compounds, and combinations thereof (col. 7, lines 44-50). The modifier of the present invention is selected from the group consisting of lactide and glycolide (see col. 10, lines 67-68 & col. 11, line 1). The modifier in the present material is preferably in an amount greater than about 0.1 weight percent to an amount less than about 60 weight percent (see col. 11, lines 35-42).

One skilled in the art would have been motivated to combine the teachings of the above references considering that it is generally prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose.

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The idea for combining them flows logically from their having been used individually in the prior art. As shown by the recited teachings, the instant claims define nothing more than the concomitant use of glycolide in a tampon. It would follow that the recited claims define prima facie obvious subject matter. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

One would have been motivated to create such a composition comprising glycolide in a health product where is taught by WO 0059556. Therefore, one of ordinary skill in the art would have been motivated to use the above teachings and produce the composition comprising glycolide, organic acid, wetting agent such as PEG where each one of the components of the composition is taught by the above references.

Finally, one would have a reasonable expectation of success given that above mentioned references provide a detailed blueprint for a composition comprising glycolide, organic acid, wetting agent such as PEG and the steps of which are routine to one of ordinary skill in the art. Sinclair teaches glycolide and lactide are from the same class compound of polymers and can be used interchangeably. Glycolide can be used in combination with lactide or separately in a formulation without any physiological effect to the composition.

It would have been obvious given the motivation above to one of ordinary skill in the art, to have combined the teachings of the above references to produce a composition comprising glycolide, organic acid, wetting agent such as PEG. All references teach the same formulation. Each component of the formulation and its

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usage is taught in the references. As combined, the cited references result in the claimed invention.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, prima facie obvious.

Applicant's remarks have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Zohreh Vakili

Patent Examiner 1614

June 3, 2008

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614